

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

AARON NATHANIEL PIERSON, v. MONICA SMITH, et al.,)) Plaintiff,)) Defendants.))))) No. CIV 23-434-Raw-Des
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OPINION AND ORDER

Plaintiff is a pro se state prisoner who is incarcerated at the McIntosh County Jail in Eufaula, Oklahoma (Dkt. 1 at 2). He filed this civil rights complaint pursuant to 42 U.S.C. § 1983, seeking relief for alleged constitutional violations at the jail. The defendants are Monica Smith, Jail Administrator; Mary Martin, Assistant Jail Administrator; Kevin Ledbetter, McIntosh County Sheriff; McIntosh County; and the McIntosh County Sheriff's Department.

I. Plaintiff's Allegations

Plaintiff alleges he is being denied access to law books, other legal material, and the right to represent himself. (Dkt. 1 at 5). He also contends his right to practice his religion is denied, because the jail policy places inmates in indefinite administrative segregation when they receive a special or religious diet. *Id.* He further claims that county inmates who are sentenced to jail time are given trustee positions and earn “2 for 1” time credits, and other inmates except Plaintiff have been given this opportunity. *Id.* at 6. In addition, this denial is discrimination based on his sex offender status. *Id.* Plaintiff also asserts the jail policy does not allow inmates “to communicate with family, friends, the courts or others by letters or phone call.” *Id.* After review of the complaint, the Court finds Plaintiff must file an amended civil rights complaint on the Court’s form, as set forth below.

II. Screening/Dismissal Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify any cognizable claims and dismiss any claims that are frivolous,

malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2)(B).

The pleading standard for all civil actions was articulated in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). See *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009). To avoid dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6), a complaint must present factual allegations, assumed to be true, that “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. The complaint also must contain “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. A court must accept all the well-pleaded allegations of the complaint as true, even if doubtful in fact, and must construe the allegations in the light most favorable to the plaintiff. *Id.* at 555-56. “So, when the allegations in a complaint, however true, could not raise a claim of entitlement to relief,” the cause of action should be dismissed. *Id.* at 558. The Court applies the same standard of review for dismissals under 28 U.S.C. § 1915(e)(2)(B)(ii) that is employed for Fed. R. Civ. P. 12(b)(6) motions to dismiss for failure to state a claim. *Kay v. Bemis*, 500 F.3d 1214, 1217-18 (10th Cir. 2007). See also *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013) (holding that § 1915A dismissals are reviewed under the Fed. R. Civ. P. 12(b)(6) standard for stating a claim for relief).

A pro se plaintiff’s complaint must be broadly construed under this standard. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The generous construction given to the pro se litigant’s allegations, however, “does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Notwithstanding a pro se plaintiff’s various mistakes or misunderstandings of legal doctrines or procedural requirements, “if a court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so” *Id.* A reviewing court need not accept “mere conclusions characterizing pleaded facts.” *Bryson v. City of Edmond*, 905 F.2d 1386, 1390 (10th Cir. 1990). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a

formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (quotations and citations omitted). The Court “will not supply additional factual allegations to round out a plaintiff’s complaint or construct a legal theory on a plaintiff’s behalf.” *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997).

III. Defendant McIntosh County Sheriff’s Department

Plaintiff has sued the McIntosh County Sheriff’s Department. “Courts routinely dismiss § 1983 claims that name and seek to impose liability directly upon municipal and county police departments because police departments are not separate suable entities.” *Harper v. City of Cortez*, No. 14-2984-KLM, 2015 WL 4720311, at *5 (D. Colo. Aug. 10, 2015) (citing cases) (unpublished). *See also Lewis v. Houston County Jail*, 876 F. Supp 861, 865 n.1 (E.D. Tex. 1995) (“The Houston County Jail is not a legal entity capable of suit.”); *Powell v. Cook County Jail*, 814 F. Supp. 757, 758 (N.D. Ill. 1993) (“Section 1983 imposes liability on any ‘person’ who violates someone’s constitutional rights ‘under color of law.’ Cook County Jail is not a ‘person’--it is not a legal entity to begin with.”); *Owens v. Scott County Jail*, 328 F.3d 1026, 1027 (8th Cir. 2003) (“[C]ounty jails are not legal entities amenable to suit.”). Because the McIntosh County Jail is not a “person” under § 1983, it is DISMISSED from this action and may not be named in the amended complaint.

IV. Access to Legal Materials

Plaintiff complains that he is not allowed access to law books, LexisNexis, and other legal materials. He does not, however, provide specific dates and instances that he was allegedly denied access to these materials. He also fails to name the specific defendant who was involved in the denial.

To have standing to raise a claim of denial of access to the courts, a prisoner must demonstrate actual injury. *Lewis v. Casey*, 518 U.S. 343, 350-51 (1996). “To do so, he must show that any denial or delay of access to the court prejudiced him in pursuing litigation.”

Treff v. Galetka, 74 F.3d 191, 194 (10th Cir. 1996). Plaintiff has failed to make this showing, instead asserting general statements about this alleged deprivation. If he raises this claim in an amended complaint, the facts must be specific, and he must show he suffered an actual injury.

V. Amended Complaint

Within twenty-one (21) days of the entry of this Opinion and Order, Plaintiff must file an amended complaint on this Court's form. The amended complaint must set forth the full name of each person he is suing under 42 U.S.C. § 1983.. Further, the names in the caption of the amended complaint must be identical to those contained in the body of the amended complaint, pursuant to Fed. R. Civ. P. 10(a). Plaintiff also is responsible for providing sufficient information for service of process. *See Lee v. Armontrout*, 991 F.2d 487, 489 (8th Cir. 1993) (plaintiff proceeding *in forma pauperis* and pro se had responsibility to provide correct names and proper addresses for service of process).

The amended complaint must include a short and plain statement of when and how each named defendant violated Plaintiff's constitutional rights and that Plaintiff is entitled to relief from each named defendant. *See* Fed. R. Civ. P. 8(a). Plaintiff also shall identify a specific constitutional basis for each claim. *See id.* He is admonished that simply alleging that a defendant is an employee or supervisor of a state agency is inadequate to state a claim. Plaintiff must go further and state how the named defendant's personal participation violated his constitutional rights. The "denial of a grievance, by itself without any connection to the violation of constitutional rights alleged by the plaintiff, does not establish personal participation under § 1983." *Gallagher v. Shelton*, 587 F.3d 1063, 1069 (10th Cir. 2009) (citations omitted). The Court only will consider claims "based upon the violation of a plaintiff's personal rights, and not the rights of someone else." *Archuleta v. McShan*, 897 F.2d 495, 497 (10th Cir. 1990).

The Tenth Circuit has explained that when a § 1983 plaintiff includes a "government agency and a number of government actors sued in their individual capacities," then "it is particularly important . . . that the complaint make clear exactly *who* is alleged to have done *what to whom*, to

provide each individual with fair notice as to the basis of the claims against him or her, as distinguished from collective allegations against the state.” *Robbins v. Oklahoma*, 519 F.3d 1242, 1249-50 (10th Cir. 2008) (emphasis in original). When a plaintiff instead uses “either the collective term ‘Defendants’ or a list of defendants named individually but with no distinction as to what acts are attributable to whom, it is impossible for any of these individuals to ascertain what particular unconstitutional acts they are alleged to have committed.” *Id.* at 1250 (citation omitted).

An amended complaint completely replaces the original complaint and renders the original complaint of no legal effect. *See Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991); *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990). *See also* Local Civil Rule 9.2(c). The amended complaint must include all claims and supporting material to be considered by the Court. *See* Local Civil Rule 9.2(c). It must be complete in itself, including exhibits, and may not reference or attempt to incorporate material from the original complaint or exhibits. *Id.* It also may not include defendants or claims that are dismissed by this Order. Pursuant to Local Civil Rule 5.2(a), the amended complaint must be clearly legible, only one side of the paper may be used, and additional sheets of paper shall have margins of no less than one (1) inch on the top, bottom, and sides. The Court Clerk is directed to send Plaintiff a form for filing an amended complaint.

ACCORDINGLY,

1. Defendant McIntosh County Sheriff’s Department is DISMISSED from this action.
2. Plaintiff is directed to file within twenty-one (21) days an amended complaint on the Court’s form as directed in this Order.
3. The Court Clerk is directed to send Plaintiff a copy of the form for filing an amended civil rights complaint in this Court.
4. Failure to comply with this Order will result in dismissal of this action without further notice.

IT IS SO ORDERED this 3rd day of January, 2024.



HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE